

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3
4 ENRIQUE LAGUNAS,

5 Plaintiff,

2:18-cv-02039-MMD-CLB

6 v.

7
8 NEVADA BOARD OF PRISON
9 COMMISSIONERS, *et al.*,

10 Defendants.

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12 **REPORT AND RECOMMENDATION**
13 **OF U.S. MAGISTRATE JUDGE¹**

14 This case involves a civil rights action filed by Plaintiff Enrique Lagunas
 15 ("Lagunas") against Rene Pena, Benedicto, Gutierrez, Sonya Carillo, Frank Dreesen,
 16 Romeo Aranas, James Dzurenda, Brian Sandoval, Barbara Cegavski and Adam Laxalt
 17 (collectively referred to as "Defendants"). Currently pending before the court is
 18 Lagunas's motion for preliminary injunction. (ECF No. 22.) Defendants responded (ECF
 19 Nos. 23, 25).² Lagunas did not file a reply brief. Having thoroughly reviewed the record
 20 and papers, the court recommends that Lagunas's motion for preliminary injunction (ECF
 21 No. 22) be denied.

22 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

23 Lagunas is an inmate in the custody of the Nevada Department of Corrections
 24 ("NDOC"), and is currently housed at Southern Desert Correctional Center ("SDCC") in
 25 Indian Springs, Nevada. (ECF No. 5.) On October 22, 2018, Lagunas submitted his
 26 initial complaint and an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.)

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28 ¹ This Report and Recommendation is made to the Honorable Miranda M. Du,
 29 United States District Judge. The action was referred to the undersigned Magistrate
 30 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

² ECF No. 25 consists of sealed documents filed in support of Defendants'
 31 opposition.

1 In his complaint, Lagunas alleges the following: Lagunas has been diagnosed as
2 having “brain damage” as a result of a mugging. *Id.* at 7. Lagunas has both a physical
3 and mental impairment. *Id.* at 14. Lagunas has also been diagnosed as having Hepatitis
4 C (“Hep-C”). *Id.* In January 2017, while incarcerated, Lagunas requested the results of a
5 Hep-C blood panel. *Id.* at 7. Carrillo informed Lagunas that the blood panel showed that
6 his APRI score was not high enough to be considered for treatment. *Id.* This suggested
7 that Lagunas would need to be sicker before he would qualify for treatment for his Hep-
8 C. *Id.*

9 Lagunas submitted an informal grievance to Dreesen and Carrillo. *Id.* The
10 informal grievance stated that without treatment his liver would continue to deteriorate.
11 *Id.* When the informal grievance was denied, Lagunas filed a first-level grievance. *Id.* at
12 8. Gutierrez responded that Lagunas’s APRI score was not high enough to qualify for
13 treatment. *Id.* Lagunas then submitted a second-level grievance. *Id.* at 9. Aranas marked
14 the grievance resolved, noting that Lagunas’s symptom of rectal bleeding was not a
15 symptom of Hep-C and that Lagunas would be monitored every six months. *Id.*

16 Hep-C is a life-threatening disease that progressively damages the liver. *Id.*
17 Defendants Sandoval, Cegavske, Laxalt, and Dzurenda are responsible for creating and
18 promulgating the medical directives that require Lagunas to become sicker before he
19 can receive treatment for Hep-C. *Id.* at 12. Defendants Aranas, Sanchez, Pena,
20 Gutierrez, and Carrillo have turned a blind eye to Lagunas’s medical needs. *Id.*
21 Defendants Dzurenda, Howell, Dreesen, Tristan, and Jane and John Does have failed to
22 ensure that adequate policies, funding, and procedures have been requested to provide
23 Hep-C treatment to Lagunas and other inmates. *Id.*

24 Pursuant to 28 U.S.C. § 1915A(a), the District Court screened the complaint on
25 September 30, 2019. (ECF No. 4.) Based on the allegations in the complaint, the Court
26 determined Lagunas could proceed on an Eighth Amendment deliberate indifference to
27 serious medical needs claim against Defendants. (*Id.*)

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1 **II. Lagunas's Emergency Motion for Preliminary Injunction**

2 On January 19, 2021, Lagunas filed an emergency motion for preliminary
3 injunction and/or protective order under Rule 65. (ECF No. 22.) In the motion, Lagunas
4 asserts that he was diagnosed with Hep-C in 2009 and due to the failure to provide him
5 treatment, his medical condition is getting worse. (*Id.* at 2). He claims that he will suffer
6 irreparable damage to his liver and internal organs unless he receives treatment. (*Id.* at
7 3). Lagunas requests that the court order that he receive treatment for his Hep-C
8 immediately. (*Id.* at 4.)

9 In response, Defendants argue that a preliminary injunction is inappropriate
10 because: (1) Lagunas cannot demonstrate he will suffer irreparable injury without
11 immediate treatment; (2) Lagunas cannot establish a strong likelihood that he will
12 succeed on his claim; and (3) the new NDOC policy related to Hep-C treatment and
13 Consent Decree render Lagunas's motion moot because he will receive Hep-C treatment
14 in order of priority of other NDOC inmates. (ECF No. 23.)

15 **II. LEGAL STANDARD**

16 The purpose of a preliminary injunction or temporary restraining order is to
17 preserve the status quo if the balance of equities so heavily favors the moving party that
18 justice requires the court to intervene to secure the positions until the merits of the
19 action are ultimately determined. *University of Texas v. Camenisch*, 451 U.S. 390, 395
20 (1981). A preliminary injunction is an "extraordinary and drastic remedy" that is "never
21 awarded as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citations omitted).
22 Instead, in every case, the court "must balance the competing claims of injury and must
23 consider the effect on each party of the granting or withholding of the requested relief."
24 *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008) (quotation marks
25 and citation omitted). The instant motion requires the Court determine whether Plaintiff
26 has established the following: (1) he is likely to succeed on the merits; (2) he is likely to
27 suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities
28 tips in his favor; and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20

1 (citations omitted).

2 Before *Winter*, courts in the Ninth Circuit applied an alternative “sliding-scale”
 3 test for issuing a preliminary injunction that allowed the movant to offset the weakness
 4 of a showing on one factor with the strength of another. See *Alliance for Wild Rockies*
 5 v. *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011); see also *Beardslee v. Woodford*, 395
 6 F.3d 1064, 1067 (9th Cir. 2005). In *Winter*, the Supreme Court did not directly address
 7 the continued validity of the Ninth Circuit’s sliding-scale approach to preliminary
 8 injunctions. See *Winter*, 555 U.S. at 51; see also *Alliance*, 632 F.3d at 1131. The Ninth
 9 Circuit has since found that post-*Winter*, this circuit’s sliding-scale approach, or “serious
 10 questions” test survives when applied as part of the four-element *Winter*’s test.
 11 *Alliance*, 632 F.3d at 1131-32. “In other words, ‘serious questions going to the merits’
 12 and a hardship balance that tips sharply towards the plaintiff can support issuance of an
 13 injunction, assuming the other two elements of the *Winter* test are also met.” *Id.*
 14 (citations omitted). The portion of the sliding-scale test that allowed injunctive relief
 15 upon the possibility, as opposed to likelihood, of irreparable injury to the plaintiff, was
 16 expressly overruled by *Winter*. See *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127
 17 (9th Cir. 2009).

18 An even more stringent standard is applied where mandatory, as opposed to
 19 prohibitory preliminary relief is sought. The Ninth Circuit has noted that although the
 20 same general principles inform the court’s analysis, “[w]here a party seeks mandatory
 21 preliminary relief that goes well beyond maintaining the status quo *pendente lite*, courts
 22 should be extremely cautious about issuing a preliminary injunction.” *Martin v.*
 23 *International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); see also
 24 *Committee of Cent. American Refugees v. Immigration & Naturalization Service*, 795
 25 F.2d 1434, 1442 (9th Cir. 1986). Thus, an award of mandatory preliminary relief is not
 26 to be granted unless both the facts and the law clearly favor the moving party and
 27 extreme or serious damage will result. See *Garcia v. Google, Inc.*, 786 F.3d 733, 740
 28 (9th Cir. 2015) (quoting *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir.

1 1979)).

2 Finally, the Prison Litigation Reform Act (PLRA) mandates that prisoner litigants
3 must satisfy additional requirements when seeking preliminary injunctive relief against
4 prison officials:

5 Preliminary injunctive relief must be narrowly drawn, extend no further than
6 necessary to correct the harm the court finds requires preliminary relief,
7 and be the least intrusive means necessary to correct that harm. The court
8 shall give substantial weight to any adverse impact on public safety or the
9 operation of a criminal justice system caused by the preliminary relief and
10 shall respect the principles of comity set out in paragraph (1)(B) in tailoring
11 any preliminary relief.

12 18 U.S.C. §3626(a)(2). Thus, section 3626(a)(2) limits the Court's power to grant
13 preliminary injunctive relief to inmates. *Gilmore v. People of the State of California*, 220
14 F.3d 987, 998 (9th Cir. 2000). "Section 3626(a)(2) . . . operates simultaneously to
15 restrict the equity jurisdiction of federal courts and to protect the bargaining power of
16 prison administrators-no longer may courts grant or approve relief that binds prison
17 administrators to do more than the constitutional minimum." *Id.* at 999.

18 III. DISCUSSION

19 Having reviewed Lagunas's filings with the above-cited principles in mind, it is
20 clear that Lagunas has not made the showing required for an injunction to issue.

21 First, Lagunas he has not shown he will suffer irreparable harm if he does not
22 receive Hep-C treatment ("DAA") immediately. See *Winter*, 555 U.S. at 20. The only
23 records provided by Lagunas is a copy of a grievance response he received in 2017 –
24 over three years ago. (ECF No. 22 at 6). This document does not provide any
25 information related to Lagunas's present Hep-C prognosis or liver function.

26 However, Defendants' did provide some of Laguna's medical records. (ECF No.
27 25-1; 25-2). These records reveal that Lagunas has been monitored by the Chronic
28 Disease Clinic at NDOC to monitor his Hep-C. (ECF No. 25-1). In addition, Lagunas's
blood tests show that he has a fibrosure score of F1. (ECF No. 25-2 at 40). These
records indicated that there was an absence of "clinically significant fibrosis." (*Id.* at 5).

1 As such, Lagunas has failed to provide evidence to the court which would establish that
2 he will suffer irreparable harm if he is not provided immediate Hep-C treatment.

3 Moreover, Lagunas's request for treatment is moot because he is currently in line
4 to receive DAA treatments for his Hep-C. NDOC Medical Directive 219 was recently
5 updated which provides that all inmates who test positive for Hep-C will be treated with
6 DAAs (unless certain conditions apply.) (ECF No. 23-1). Therefore, pursuant to MD 219,
7 Lagunas will receive DAA treatments. In addition, in 2020 a Consent Decree was
8 entered by the District of Nevada, which settled a class action lawsuit related to Hep-C
9 treatments in the NDOC. (ECF No. 23-3). Pursuant to the Consent Decree, all current
10 and future NDOC inmates within NDOC custody who have been diagnosed with Hep-C
11 and who have a certain period of time remaining on their sentence are eligible for DAA
12 treatments. (*Id.*) The treatment will be provided in order of priority based on
13 determinations related to various factors specific to each inmate. (*Id.*) The Consent
14 Decree also requires that the DAA treatment must be provided within certain timeframes
15 from the entry of the decree. (*Id.*) Based on MD 219 and the Consent Decree, Lagunas
16 is eligible for, and will receive, DAA treatment in order of priority with all other NDOC
17 inmates who have tested positive for Hep-C in due course.

18 Having found that Lagunas has not made the requisite showing that he is not
19 likely suffer irreparable harm if not immediately provided DAA treatment and that
20 Lagunas will be receiving DAA treatment pursuant to the Consent Decree based on his
21 priority level, the court concludes that a preliminary injunction is not warranted.

22 **IV. CONCLUSION**

23 Based upon the foregoing, the court recommends that Lagunas's motion for
24 preliminary injunction (ECF No. 22) be denied.

25 The parties are advised:

26 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
27 Practice, the parties may file specific written objections to this Report and
28 Recommendation within fourteen days of receipt. These objections should be entitled

1 "Objections to Magistrate Judge's Report and Recommendation" and should be
2 accompanied by points and authorities for consideration by the District Court.

3 2. This Report and Recommendation is not an appealable order and any
4 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
5 District Court's judgment.

6 **V. RECOMMENDATION**

7 **IT IS THEREFORE RECOMMENDED** that Lagunas's motion for preliminary
8 injunction (ECF No. 22) be **DENIED**.

9 **DATED:** February 16, 2021.

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11 **UNITED STATES MAGISTRATE JUDGE**
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